

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Metrocall USA, Inc.
Station WNEU373,
Colorado Springs, Colorado
FCC File No. R990715060

ORDER ON RECONSIDERATION

Adopted: September 20, 2000

Released: September 21, 2000

By the Acting Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On March 9, 2000, Metrocall USA, Inc. (Metrocall) submitted a Petition for Reconsideration (Petition) of a decision by the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, denying its Request for Rule Waiver and License Renewal for Station WNEU373, Colorado Springs, Colorado (Waiver Request). Specifically, Metrocall requests that we grant its Waiver Request and reinstate its license for the above-referenced Multiple Address System (MAS) license. For the reasons set forth herein, we dismiss the Petition.

II. BACKGROUND

2. On February 19, 1997, the Commission adopted a Notice of Proposed Rulemaking in WT Docket No. 97-81, seeking public comment on proposals designed to streamline licensing procedures for, and to increase the technical and operational flexibility of, MAS licenses. In the Notice, the Commission also temporarily suspended acceptance of MAS applications for new licenses, amendments, or major modifications in the 928/959 MHz and 932/941 MHz bands, and applications in the 928/952/956 MHz band for the provision of subscriber-based services. The Notice stated that any such applications received on or after February 19, 1997, the date of adoption of the Notice, would be returned as unacceptable for

1 See Letter from Frederick Joyce and Ronald Quirk, Jr., Counsel for Metrocall USA, Inc. to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (dated March 9, 2000) (Metrocall Petition).

2 See Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division to Frederick Joyce, Esq., Alston & Bird L.L.P. (Feb. 8, 2000) (Feb. 8 Letter).

3 See Metrocall Petition at 7.

4 Amendment of the Commission's Rules Regarding Multiple Address Systems, Notice of Proposed Rulemaking, WT Docket No. 97-81, 12 FCC Rcd 7973 (1997).

5 Id. at 8003-04 ¶¶ 68-71, 8006-07 ¶¶ 78-81.

filing.⁶ On July 1, 1999, the Commission released a *Further Notice of Proposed Rulemaking* and sought comment on the impact of the provisions of the Balanced Budget Act of 1997 on the proposals introduced in the *Notice*.⁷ The *Further Notice* immediately suspended the acceptance and processing of applications in the 928/952/956 MHz band, regardless of the type of service proposed by the applicant, with some exceptions, during the pendency of the proceeding.⁸ Subsequently, on January 19, 2000, the Commission released the *MAS Report and Order*, which lifted the application freeze with respect to the 928/952/956 MHz band and twenty channels in the 932/941 MHz band, while maintaining the application freeze in the 928/959 MHz band and twenty channels in the 932/941 MHz band.⁹

3. As a result of McCaw RCC of Colorado, Inc.'s, (McCaw), transfer of control and *pro forma* assignment to Metrocall, the Commission on October 30, 1998, granted Metrocall authorization to operate Station WNEU373, which utilized MAS frequency pair 928.9625/959.9625 MHz. The station is part of Metrocall's paging system.¹⁰ Among Metrocall's subscribers are entities such as the Colorado Springs Police Department, the Colorado Springs Firefighter's Association, and 8 Healthtone/PSL (serving transplant patients).¹¹ Due to an administrative oversight, Metrocall failed to renew the subject license by its April 12, 1999, expiration date.¹² Metrocall discovered its error, and filed its application,¹³ along with its Waiver Request,¹⁴ on July 9, 1999.

4. On February 8, 2000, the Branch denied Metrocall's Waiver Request and dismissed its application. The Branch stated that it was not convinced that granting a waiver was warranted or would be in the public interest, that Metrocall had not demonstrated that its case presented circumstances sufficient to justify the grant of its waiver request, and that granting a waiver would frustrate the underlying purpose of the ongoing MAS freeze.¹⁵ On March 9, 2000, Metrocall petitioned for reconsideration of the Branch's decision. The Petition was addressed to the Chief of the Branch, which is located in Gettysburg, Pennsylvania.¹⁶

⁶ *Id.* at 8003 ¶ 68.

⁷ Amendment of the Commission's Rules Regarding Multiple Address Systems, *Further Notice of Proposed Rulemaking*, WT Docket No. 97-81, 14 FCC Rcd 10744 (1999).

⁸ *Id.* at 10761 ¶ 28.

⁹ Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, WT Docket No. 97-81, 15 FCC Rcd 11956 (2000).

¹⁰ *See* Metrocall Petition at 2.

¹¹ *Id.*

¹² *See* Metrocall Petition at 2; Waiver Request at 2.

¹³ *See* Public Notice Report No. 2050 (July 20, 1999).

¹⁴ Metrocall Petition at 1-2; Waiver Request at 2.

¹⁵ Feb. 8 Letter at 1.

¹⁶ *See* Metrocall Petition at 1.

III. DISCUSSION

5. Section 405 of the Communications Act, as amended, sets forth the requirements that a petitioner must satisfy before we may consider the petitioner's pleadings on reconsideration.¹⁷ Section 405, as implemented by Section 1.106(f) of the Commission's Rules, requires that a petition for reconsideration be filed within thirty days of the release date of the Commission's action.¹⁸ Furthermore, Section 1.106(i) states that a petition for reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.¹⁹

6. The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location as specified in the Commission's Rules.²⁰ A document is filed with the Commission upon its receipt at the location designated by the Commission.²¹ Accordingly, based on the plain language of the Commission's Rules, a petition for reconsideration submitted to the FCC's Gettysburg, Pennsylvania office is not properly filed.²²

7. We conclude that Metrocall did not satisfy the filing requirement in accordance with Section 1.106 of the Commission's Rules when it submitted its Petition to the Branch in Gettysburg, Pennsylvania instead of submitting it to the FCC's Office of the Secretary in Washington, D.C. Because the thirty-day window for the filing of a petition for reconsideration, as determined under Section 1.4 of the Commission's Rules,²³ closed on March 9, 2000, the Petition was not received by the Secretary within the thirty-day period. For the reason stated above and in the absence of a request for waiver of the requisite filing location, we hereby dismiss the Petition.²⁴

¹⁷ 47 U.S.C. § 405.

¹⁸ 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

¹⁹ 47 C.F.R. § 1.106(i).

²⁰ 47 C.F.R. § 0.401.

²¹ 47 C.F.R. § 1.7; First Auction of Interactive Video and Data Service (IVDS) Licenses, Request for Waiver of Applications Deadline, *Memorandum Opinion and Order*, 11 FCC Rcd 1134, 1135 (1996); Complaints Regarding Cable Programming Service Prices, *Amended Order on Reconsideration*, 10 FCC Rcd 12778, 12780 n.14 (CSB 1995).

²² See, e.g., Memorandum of Agreement between the Federal Communications Commission and Elkins Institute, Inc., *Order on Reconsideration*, 14 FCC Rcd 5080 (WTB 1999) (determining that a facsimile copy to a division office neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office); Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782 (WTB PSPWD 1999) (finding that a petition for reconsideration sent to the Commission's lock box at Mellon Bank neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office), *aff'd*, *Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000).

²³ 47 C.F.R. § 1.4(b)(5).

²⁴ Moreover, we note that the Branch correctly denied Metrocall's request for waiver of Section 1.949 of the

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405 and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration submitted by Metrocall USA, Inc. on March 9, 2000, IS DISMISSED.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMUNICATION

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Commission's Rules and the ongoing MAS application freeze. Section 1.949 of the Rules requires that an application for renewal of a wireless license be filed by the expiration date of that license. *See* 47 C.F.R. § 1.949. Metrocall explains that the delay in filing its renewal was due to the "large amount of paperwork and other administrative matters that are associated with the integration of McCaw's former stations into its system" and argues that no reasonable alternatives exist. Metrocall Petition at 5. We do not believe, however, that an inadvertent failure to renew a license in a timely manner in connection with a merger or reorganization warrants a waiver of the rules. *See* Northwest Missouri Cellular, *Order*, DA 00-1786, ¶ 9 (WTB PSPWD rel. Aug. 7, 2000); Duke Power Company, *Order*, 14 FCC Rcd 19431, 19434 ¶ 8 (WTB PSPWD 1999).